

Compilation of Public Comments
2002 FINAL Section 303(d) List of Impaired Waters
Requiring TMDL Development

Commentators	Date Received	Summary of Comments/Questions	Summary of LDEQ Responses
PPG Industries, Inc.; Louisiana Chemical Association (Submitted virtually identical comments)	06-30-03	<p>1) In the response to an initial comment regarding support for LDEQ's removal of copper as a cause of impairment for Bayou D'Inde (subsegment 030901) and the Calcasieu River (subsegment 030301), and mercury as a cause of impairment for Bayou D'Inde (subsegment 030901) and Bayou Verdine (subsegment 030306, LDEQ responded, "...EPA may still enforce the TMDL due to their oversight capacity." PPG and LCA are not clear what is meant by this statement and believes that the available documentation fully supports that these subsegments are not impaired for the above referenced metals.</p> <p>2) PPG and LCA believe it is inappropriate for LDEQ to classify Bayou D'Inde (030901) as a 4a impairment for "contaminated sediments (HCB, HCBd)" on the basis of</p>	<p>1) LDEQ agrees with the statement that available documentation and data show these subsegments are not impaired for the referenced metals. To clarify on the initial response to comments, LDEQ can only state that the EPA has the authority to enforce any TMDLs it develops with or without the agreement of LDEQ.</p> <p>2) Neither LDEQ nor EPA has promulgated sediment criteria. Therefore, LDEQ must rely on the Louisiana Department of Health and Hospital's (LDHH) assessment, for which the best available human health factors have been applied. The fact that EPA's TMDL does not target HCB and HCBd in the sediment does not override LDEQ's requirement to list any water body for which LDHH has issued a fishing or swimming advisory. This requirement is supported by LDEQ's narrative criteria, LAC 33:IX.1113.B.6.4, which states "no substances shall be present in the waters of the state or the sediments underlying said waters in quantities that alone or in combination will be toxic to human, plant, or animal life or significantly increase health risks due to exposure to the substances or consumption of contaminated fish or other wildlife." In addition, the advisory in question is not limited to recreational contact, but also includes fish consumption guidelines.</p> <p>3) LDEQ acknowledges this comment and will revise the "suspected cause" nomenclature.</p> <p>4) Please refer to response number 2.</p> <p>5) Please refer to response number 7.</p> <p>6) According to an Interagency agreement signed on Jan. 22, 1997, LDHH, LDEQ, LDAF, and LDWF "agreed to work together to protect Louisiana citizens' health by following the procedures described in the document entitled <u>Protocol for Issuing Health Advisories and Bans Based on Chemical Contamination of Fish/Shellfish in Louisiana</u>." Section 3.2.4 of this document outlines the procedure for rescinding an advisory. LDEQ will reclassify a water body when (1) the advisory is rescinded and (2) ambient water quality data are meeting criteria.</p> <p>7) LDEQ acknowledges the fish consumption rate used by LDHH to establish fish consumption advisories is more stringent than the rate used by LDEQ to set ambient water quality criteria. However, LDEQ is bound by the interagency agreement cited in response 6, immediately above, to protect human health and by our own regulations (Also refer to response number 2). Therefore, LDEQ is required to list any water body with a human-health related advisory in the Integrated Report. Furthermore, LDEQ uses a much more stringent fish consumption rate (20 g/day) than recommended by EPA (6.5 g/day) based on surveys conducted in the state of Louisiana.</p>

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		<p>the LDHH recreational advisory, unless, the LDHH advisory is based on the same exposure assumptions as LDEQ's numeric water quality standards for human health protection from HCB and HCBd. In addition, EPA's TMDL indicates mercury, not organics as the suspected cause of impairment. As an alternative, PPG and LCA request that LDEQ reclassify Bayou D'Inde as CALM category 3.</p> <p>3) Although LDEQ has made an effort to phase out generic listings, PPG and LCA specifically request LDEQ to revise the suspected cause of impairment for Bayou D'Inde to read "HCB and HCBd" instead of "Priority Organics."</p> <p>4) PPG and LCA agree that LDEQ should not list any water body as impaired for "contaminated sediments" unless an appropriate advisory has been issued. An appropriate advisory must be one which the risk assessment parameters, including</p>	

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		<p>exposure factors, are the same or less stringent than parameters assumed by LDEQ in developing water quality standards.</p> <p>5) EPA Guidance provides that LDEQ is not required to use fish and shellfish consumption advisories where they are based on exposure assumptions more conservative than the exposure assumptions underlying the LDEQ human health water quality criteria. PPG and LCA have provided documentation to support the statement that the risk assessment parameters used by LDHH are cumulatively more conservative than those used by LDEQ under its water quality criteria, and therefore, LDEQ should not use the LDHH fish/shellfish consumption advisory for use in the 303(d) listing process.</p> <p>6) PPG and LCA request LDEQ to establish a clear "exit" procedure for reclassification of waters where reasonably available data and information show that</p>	

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		<p>the criteria for establishing the fish/shellfish consumption advisory no longer exist.</p> <p>7) LDEQ should establish criteria consistent with the risk assessment assumptions underlying its water quality standards for determining when LDHH recreational contact advisories show impairment of the designated use.</p>	
<p>Comments submitted by Tulane Environmental Law Clinic on behalf of Louisiana Audubon Council, LEAN, Gulf Restoration Network, Save Our Wetlands, and Rudy Mills (Hereinafter, referred to collectively as Tulane Environmental Law Clinic (TELC))</p>	<p>6-30-03</p>	<p>1) Section 303(d) does not provide for exceptions for waters with TMDLs or with other control measures in place. In general, TELC is concerned that portions of CWA § 301(b) are not being met with regards to waters for which, “effluent limitations are not stringent enough to meet water quality standards” (CWA § 301(b)(1)(A-B)). TELC interprets the language of § 303(d) of the Clean Water Act to include water bodies classified by LDEQ under the Consolidated Assessment and Listing Methodology (CALM) guidance as categories</p>	<p>1) As was noted in Louisiana’s first response to comments, Louisiana used EPA’s CALM guidance in developing its 2002 § 303(d) List. CALM guidance is, in effect, a prioritization of water bodies as required under § 303(d)(1)(A). Water bodies that already have a TMDL completed or other activities that are expected to result in support of water quality standards effectively have a lower priority than water bodies that do not have a TMDL or other activity in place. Any comments regarding the suitability of EPA’s CALM guidance should be addressed to EPA.</p> <p>With regard to CWA § 301(b)(1)(A-B), CWA regulations expand upon the requirements of 303(d) regarding “effluent limitations not stringent enough...” For example, 40 CFR §130.7(b)(1)(i-iii) includes requirements for technology-based effluent limitations (clause i); more stringent effluent limitations (clause ii); and <i>other</i> pollution control requirements (e.g. <i>best management practices</i>) required to implement water quality standards (clause iii) (emphasis added). The specific inclusion of “other pollution control requirements” (e.g. <i>best management practices</i>) indicates there are conditions where effluent limitations may not be the most applicable means of controlling water quality problems, thus making BMPs more useful. There are many instances in Louisiana where effluent limitations on point sources are not as useful because point sources are either absent or few in number. The CFR goes on to describe the means by which waters may be removed from the 303(d) list for good cause. These include but are not limited to, “more recent or accurate data; more accurate water quality modeling; flaws in the original analysis that led to the water being identified in a category in §130.10(d)(6); or changes in conditions, e.g., new control equipment, or elimination of discharges.” (40 CFR § 130.10(d)(7)(4).</p> <p>Clearly therefore, while the meeting of water quality standards based on “effluent limitations” is a necessary and useful means of attaining and implementing water quality standards, it is</p>

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		<p>4a and 4b. They further emphasize that developing a TMDL for a water body does not remove the impairments. And state that programs in place by other state agencies do not replace a TMDL.</p> <p>2) "Simply because a TMDL has been developed does not mean that the water body segment is now meeting water quality standards."</p> <p>3) Narrative criteria for taste and odor (LAC 33:IX.1113 (B)(4)) contradicts LDEQ's methodology of applying taste and odor criteria only to water bodies designated as a drinking water source</p> <p>4) Assessment method of only including nutrients as a source of impairment when low levels of dissolved oxygen are present is not valid. TELC's disagreement is based on their statement that nutrients also cause increased plant growth, leading to high DO concentrations during photosynthesis (daylight hours).</p>	<p>understood within the CFR that effluent limitations are not the only means by which water quality standards must be implemented under CWA § 303(d).</p> <p>TELC's example of water bodies placed in Category 4b due to non-native aquatic plants is a case in point. As was noted by TELC, non-native aquatic plants are being addressed by the Louisiana Department of Wildlife and Fisheries (LDWF). LDWF's program is clearly not directed at "effluent limitations", as TELC presumes is required under the CWA. However, the program does fall under the definition of "other pollution control requirements (e.g. best management practices) as was noted above (40 CFR § 130.7(b)(1)(iii)). TELC's position with regard to "effluent limitations" and non-native plants also begs the question of how such "required" control measures could possibly be implemented in the absence of point sources affecting the non-native plants.</p> <p>2) Contrary to TELC's statement, Louisiana never stated that a water body subsegment was meeting water quality standards once a TMDL had been developed. Rather, LDEQ's and EPA's position is that once a TMDL has been developed, water quality standards are expected to be met once the TMDL has been implemented and the water body has had sufficient time to recover.</p> <p>3) After additional review of the regulation, Louisiana recognizes that LAC § 1113.B.4 does refer to other designated water uses beside just drinking water uses. Therefore, LDEQ asked regional field staff to reevaluate those water bodies previously listed for taste and odor. This reevaluation was based on field sampling trips made during the course of each water bodies annual monitoring rotation. The revised assessments are as follows: Comite River from State line to Wilson-Clinton Highway (040102) - Comite River from White Bayou to Amite River (040103) Amite River from Hwy 37 to Amite River Diversion Canal (040302) Grays Creek from headwaters to Amite River (040304) Blind River from Amite River Diversion Canal to mouth at Lake Maurepas (040401) Capitol Lake (070503) Bayou Maringouin from headwaters to East Atchafalaya Basin Levee (120111) Bayou Petite Caillou from Klondyke Road Bridge to boundary between segments 1205 and 1207 (120504) Bayou Petit Caillou from boundary between segments 1205 and 1207 to Houma Navigation Canal (120702).</p> <p>4) TELC's comments regarding the interaction of nutrients and dissolved oxygen (DO) levels in water indicates a lack of understanding of water quality issues and jumps to an incorrect assumption based on otherwise accurate statements. First, TELC correctly states that high levels of nutrients can lead to algal blooms and may result in decreases in DO. This is a well-known phenomenon that forms the basis for LDEQ's position regarding nutrients and DO. Second, TELC correctly states that high levels of nutrients can lead to increased aquatic plant growth resulting in increased DO due to photosynthesis during daylight hours. This would presumably be a favorable result of high nutrient levels. However, TELC has failed to show</p>

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		<p>5) "LDEQ improperly excludes waters impaired for turbidity, because it believes that it would be difficult to prepare a TMDL using narrative criteria."</p> <p>6) Continue to disagree with LDEQ's interpretation of the bacteria water quality standard and request LDEQ reassess the waters of Louisiana according to TELC's interpretation of the bacteria criterion.</p> <p>7) Request LDEQ reevaluate all waters impaired due to drought conditions if these conditions change.</p> <p>8) Request the following water bodies be added to the § 303 (d) list due to recently issued fish consumption advisories for mercury contamination: Bayou Desiard (080701), Bayou Louis (080202), Corney Bayou (080607/080609), Bogue Falaya River (080804), Grand Bayou (100709), Boeuf River (080901), Tangipahoa River (040701), Kepler Creek (100704), and Big Alabama Bayou</p>	<p>how or why high nutrient levels can cause water quality problems other than low DO. Therefore, LDEQ has no additional response to this comment.</p> <p>5) Some water body subsegments previously thought to be impaired for turbidity based on evaluative assessments were placed in CALM Category 2 <i>due to a lack of numerical criteria with which to make an assessment</i>. In the original 303(d) Rationale Louisiana made the following statement with regard to turbidity assessments and listings.</p> <p style="padding-left: 40px;">In many cases, a waterbody may have been originally listed for turbidity, siltation and or TSS based on evaluative assessments, despite the fact that specific numerical criteria for these parameters have not been established for that waterbody. In cases where water body class criteria or surrogate criteria (ONR criteria) could not be used to quantitatively assess these waterbodies as noted above, the waterbody was kept in Category 2. This categorization will be maintained until such time as Louisiana develops site-specific or waterbody class criteria for turbidity for these waterbodies. These changes to Louisiana's § 303(d) List are permitted under provisions of the CWA described on page one of the §303(d) List Rationale.</p> <p>6) No changes to the bacteria assessments developed for the original 2002 Louisiana Integrated Report will be made, because LDEQ developed and knows the intent of its regulations. In addition there is legal precedence supporting LDEQ's ability to interpret its own regulations. However, LDEQ will review its bacteria criteria as defined in LAC §1113.C.5.b.i in order to determine whether any revision of the criteria is warranted to avoid any future misinterpretations by the public of Louisiana's bacteria criteria.</p> <p>7) Under Louisiana's current rotating basins approach to ambient water quality monitoring, all waters of the State as defined in LAC §1123, Table 3 are monitored for at least a one year period every five years. New water quality assessments are developed for the next CWA even numbered year Integrated Reporting cycle following each basins most recent monitoring rotation. As a result, the water bodies listed as impaired due to drought conditions will be reevaluated following their next ambient monitoring period.</p> <p>8) Each of these subsegments and water bodies will be added to CALM Category 5 (the List) as requested. These advisories were first issued by LDHH following the two initial public notice periods, and as such could not have been anticipated by LDEQ in the Integrated Reporting process.</p> <p>9) Any changes to the Integrated Report made as a result of data collected in 2002 and 2003 will not be made until development of the 2004 Integrated Report and § 303(d) List. As a result, these changes will be duly reported as part of the public notice process for the 2004 report and list.</p>

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		<p>(010401).</p> <p>9) In response to the caveat “subject to revision pending assessment of 2002 data”, as applied to some water body/pollutant combinations in the DRAFT 2002 § 303(d) list, the commentators note LDEQ must notify the public and provide an opportunity to comment before removing any water body from the 303(d) list.</p>	
Gulf Restoration Network (Hereinafter referred to as GRN)	12/16/02	<p>1) GRN requests the following water bodies be added to the § 303 (d) list due to recently issued fish consumption advisories for mercury contamination: Bayou Desiard (080701), Bayou Louis (080202), Corney Bayou (080607/080609), Bogue Falaya River (080804), Grand Bayou (100709), Boeuf River (080901), Tangipahoa River (040701), Kepler Creek (100704), and Big Alabama Bayou (010401). In addition, GRN requests that Henderson Lake be added to the description</p>	<p>1) The requested water body subsegments or portions of water bodies will be added to CALM Category 5, the 303(d) List. These water bodies were not included on the previous draft because the advisories had not been issued at that time.</p> <p>Henderson Lake cannot be added to the description of subsegment 010301 as requested, because this would require a modification to Louisiana’s regulation defined subsegments. However, Henderson Lake, by name, will be included in Category 5 to enable easier tracking of advisory water bodies by the public. Inclusion of Henderson Lake in this manner does not change the status of subsegment 010301, nor does it effectively add a water body to the list, because the lake is located within a subsegment that has already been identified as impaired due to mercury in fish. Other named water bodies located within regulation defined subsegments but not specifically named in the subsegment description will also be added, by name, to Category 5 in order to facilitate their tracking.</p> <p>2) Due to space constraints, it is not possible to detail every aspect of the remediation activities taking place on all water bodies placed in Category 4b. This information can be obtained from the appropriate Offices and Divisions of LDEQ. All remediation activities carried out by LDEQ or EPA are governed by their own set of State and Federal regulations specifying the timeliness of the efforts, as well as penalties for failure to comply. As such, it is outside the immediate scope of provisions of § 303(d) and this information cannot be provided within the Integrated Reporting process. However, under the rotating monitoring program for ambient monitoring, as well as biennial § 305(b) reporting, any failure of these remediation activities to restore water quality will be identified during the course of future assessments.</p> <p>3) LDEQ recognizes the difficulty of associating all water body impairment combinations found</p>

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		<p>of West Atchafalaya Basin (010301).</p> <p>2) GRN requests detailed descriptions of remediation activities of waters placed in category 4b of the Integrated Report.</p> <p>3) GRN makes a general request for more explicit explanations in the Integrated Report, particularly the names of the corresponding TMDLs for water bodies in category 4a.</p> <p>4) GRN continues to strongly disagree with LDEQ's interpretation of state regulations (bacteria criteria.) and EPA's support of this interpretation.</p> <p>5) GRN disagrees with the LDEQ's method of only including nutrients as a source of impairment when low levels of dissolved oxygen are present. Their disagreement is based on their statement that nutrients also cause increased plant growth, leading to high DO concentrations during photosynthesis (daylight hours).</p> <p>6) GRN states LDEQ improperly excludes</p>	<p>in Category 4a, with the applicable TMDL developed by LDEQ or EPA. While time does not permit including TMDL references for all Category 4a water bodies in this reporting cycle, LDEQ will endeavor to incorporate this concept for the upcoming 2004 Integrated Report cycle. LDEQ is also attempting to develop a 305(b)/303(d)/TMDL/permitting database that will enable tracking all of this information in a single system. It is hoped this database will make it easier for all interested parties to track changes to the Integrated Report and TMDL development.</p> <p>4) Please refer to TELC comment and response number 6. Also, with regard to GRN's comment regarding the 25% rule for assessing potential fecal coliform impairment, this criteria and assessment methodology are codified in LAC 3113.C.5.b.1. As such, this criteria has been approved by EPA and in use for a number of years.</p> <p>5) Please refer to TELC comment and response number 4.</p> <p>6) Please refer to TELC comment and response number 5.</p> <p>7) As was noted in the original response to comments, Louisiana currently does not list any water body for contaminated sediments unless an advisory has been issued. GRN referred to four specific water body subsegments. <u>Inner Harbor Navigation Canal (041501)</u> – This subsegment is not listed for sediment contamination because there are no numerical data for sediments with which to make a determination that the sediments are toxic to human, plant or animal life. Further, LDHH has not issued a swimming or sediment contact advisory for this area. <u>Bayou d'Inde (030901)</u> – Bayou d'Inde was listed on a previous 303(d) List due to contaminated sediments. The listing was the result of a swimming advisory issued by LDHH. This water body impairment combination (WIC) was placed in Category 4a because a TMDL has been completed by EPA. <u>Devil's Swamp (070203)</u> – Devil's Swamp was listed as Category 4b for priority organics, nonpriority organics, and unknown toxicity. All of these impairments were related to the LDHH advisory against swimming and fish consumption. Listing as Category 4b was based on the fact that remediation activities are in place for the subsegment. <u>Bayou Bonfouca (040907)</u> – Bayou Bonfouca was listed as Category 4b for priority organics. This impairment was based on a swimming and sediment contact advisory issued by LDHH. Listing as Category 4b was based on the fact that remediation activities are in place for the subsegment.</p> <p>8) Placement of water bodies on the 303(d) List as a "precautionary approach" in the absence of adequate data does not serve to "ensure the health of Louisiana's people and its environment" as suggested by GRN. Water body impairments can only be identified and addressed through the use of sound data and science. Only after proper identification of a problem can remediation measures be initiated. The 303(d) List is intended not only to identify impaired waters but also to prioritize remediation efforts for those waters. Adding additional water bodies to the List without adequate information only serves to dilute the water quality management efforts of LDEQ and EPA. As was noted in the original response to comments,</p>

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		<p>water bodies impaired for turbidity.</p> <p>7) LDEQ improperly excludes water bodies impaired due to chemical contamination of sediments. Specifically: 041501 – Inner Harbor Navigation Canal; 030901 – Bayou d’Inde; 070203 – Devil’s Swamp; and 040907 – Bayou Bonfouca</p> <p>8) GRN suggests a more precautionary approach to removing water bodies from the § 303(d) list.</p> <p>9) The following discrepancies between the Draft § 303(d) List and the § 305(b) Report were noted:</p> <ol style="list-style-type: none"> 1. Segment 020904 was removed from the DRAFT list for mercury 2. Drainage/Filling/Loss of Wetlands is listed as a source of impairment for segment 040502, which GRN does not consider a natural source 3. Segment 040504 was removed from the DRAFT list for phosphorus 4. Segment 090104 was shown as supporting all uses, contrary to 	<p>all water bodies in the State receive the same protections from permitting and enforcement. While placement of a water body on the § 303(d) List does initiate action if a problem exists, listing alone is not the only means of water quality protection. Please see GRN comment and response number 8 of the original LDEQ response to comments document.</p> <p>9) <u>Wilkinson Canal and Wilkinson Bayou (020904)</u> – This subsegment was removed from the § 303(d) List as a result of new data collected using clean-techniques metals sampling and analysis. Clean-techniques sampling reduces the potential for sampling or laboratory induced contamination of a sample, thereby, providing a more reliable measure of the actual mercury content of the water.</p> <p><u>Tickfaw River (040502)</u> – This subsegment was, as noted by GRN, delisted for chloride, sulfate and total dissolved solids (TDS) because the source of the impairment was drought related along with drainage/filling/loss of wetlands. GRN is correct in pointing out that drainage/filling/loss of wetlands is an anthropogenic source. However, it was the wetland loss that exacerbated the increased chlorides, sulfates and TDS due to the drought conditions. In addition, development of a TMDL for chlorides, sulfates and TDS cannot address wetland loss.</p> <p><u>Yellow Water River (040504)</u> – Please refer to TELC comment and response number 4.</p> <p><u>Peter’s Creek (090104)</u> – The comment response made to Lake Pontchartrain Basin Foundation in Louisiana’s original response to comments was first written prior to a determination to use scenic stream criteria as a possible surrogate for all streams. It was inadvertently left in the final document after the subsegment was reassessed using the scenic stream criterion. If you refer to the comment field for this WIC in the Revised Draft 2002 Integrated Report you will find the following statement. Turbidity data for this water body supports most stringent turbidity criterion of 25 NTU for scenic streams. Therefore, water body is fully supporting turbidity criterion. Based on EPA decision turbidity criterion support is a surrogate for siltation, and suspended solids criteria support.</p> <p><u>Lake Louis (080203)</u> – A review of metals data for Lake Louis found that this water body is not impaired for mercury or copper. This was an apparent mistake in the Assessment Database (ADB), which was used to generate the 305(b) assessment tables provided on LDEQ’s Website.</p> <p>10) As noted by GRN there is no federally mandated timeline for revision of TMDLs if they are found to be ineffective. However, continued monitoring and assessment of all water bodies will detect ongoing impairment at which time a determination can be made as to whether or not the TMDL is ineffective. It may also be determined that more time must be allotted to allow the water body to recover once the sources of impairment have been removed or reduced to levels believed to protect the water body.</p>

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		<p>LDEQ's prior response that this subsegment would be placed in category 2 for TSS 5. Lake Louis (080203) is shown in the integrated report as non supporting for copper and mercury, but do not appear on the DRAFT list.</p> <p>10) GRN continues to express concerns over TMDL implementation and enforcement problems, particularly when a TMDL is deemed ineffective.</p>	
Louisiana Forestry Association (LFA); Boise; Mitchell Garlington, Registered Forester	6-30-03	Citing recent studies conducted by the LSU School of Renewable Natural Resources, the commentators express concern with the accuracy of a 5 mg/L-dissolved oxygen standard.	Louisiana is aware of many studies showing the inappropriateness of the 5 mg/L dissolved oxygen criterion in place for many water bodies in the state. LDEQ is attempting to revise the dissolved oxygen criteria of water bodies wherever this is appropriate, through the Use Attainability Analysis and Site Specific Criteria process. However, such revisions are subject to EPA Region 6 approval. Thus far, EPA Region 6 has been reluctant to approve such criteria changes, citing a lack of valid evidence supporting such changes.